

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1374 of 2016

JUDGMENT:

Aggrieved by the order and decree, dated 10.12.2015 passed in O.P.No.79 of 2010 by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad, (for short "the Tribunal"), the present appeal has been filed by the Bajaj Allianz General Insurance Company Limited.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the claimants, who are the wife, sons and mother of M. Naresh Kumar (hereinafter referred to as "the deceased") filed a petition under Section 163-A of Motor Vehicles Act, claiming compensation of Rs.8,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 21.11.2008. It is stated that on 21.11.2008, the deceased was returning to his village on his Hero Honda motorcycle No.AP-25-BD-TR-9739 from Nizamabad and when he reached the outskirts of Makloor village, an unknown vehicle hit him and ran away. As a

result, the deceased sustained grievous injuries and he was shifted to Pragathi Hospital, Nizamabad and while undergoing treatment, he died. It is stated that prior to the accident, the deceased was aged 30 years, running school and getting income of Rs.25,000/- per month. Though the accident occurred due to the rash and negligent driving of the unknown vehicle, as his vehicle is insured with Insurance Company, the claimants laid the claim-petition against Insurance Company.

4. Respondent filed counter denying the averments of the petition. It is further contended that the deceased Naresh Kumar was the owner-cum-rider of the motorcycle bearing No. AP.25.BD.TR.9739, which was insured with the respondent and the deceased was not having valid driving license at the time of accident and he is not third party to the policy. It is further contended that under Section 163-A of Motor Vehicles Act, since the income of the deceased is more than Rs.40,000/- per annum, this petition is not maintainable.

5. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the petition is maintainable under Section 163-A of M.V. Act?
- 2) Whether the petitioners are entitled for compensation against the respondent. If so, to what just amount?
- 3) To what relief?

6. During trial, on behalf of the claimants, P.W.1 was examined and Exs.A1 to A10 were marked. On behalf of the respondent, R.W.1 was examined and Exs.B1 to B5 were marked.

7. After analyzing the evidence available on record, the Tribunal awarded an amount of Rs.9,51,491/- with interest @ 7.5 % per annum against the respondent. Challenging the said findings, the Insurance Company filed the present appeal.

8. Heard both the counsel and perused the material available on record.

9. The main contention raised by the learned Standing Counsel for the appellant is that when the deceased was the owner of the offending vehicle and died due to his own negligence, they are not liable to pay compensation to the petitioners and the tribunal grossly erred in holding that the deceased was getting income not less than Rs.7,000/-

though the claim petition is filed under Section 163-A of Motor Vehicles Act. It is further contended that the respondent-Insurance Company paid Rs.1,01,509/- to PW-1 for the risk covered under the personal accident policy for the death of her husband.

10. On the other hand, the learned counsel for the claimants has contended that considering the oral and documentary evidence, the tribunal has rightly awarded the compensation of Rs.9,51,491/- which is just and reasonable and needs no interference by this Court.

11. A perusal of the impugned award discloses that the Tribunal having framed Issue No.1 as to '*Whether the petition is maintainable under Section 163-A of M.V. Act*', to which the Tribunal after considering the evidence of P.W.1 coupled with the documentary evidence, has categorically observed that the claim petition under Section 163-A of Motor Vehicles Act is maintainable and has answered the issue in favour of the claimant and against the respondent. The compensation finally payable under **Section 163A** is materially different from the minimum prescribed compensation payable under **Section 140**, though both these provisions dispense with the proof of negligence on the part of the owner of

the **vehicle** or **vehicles** concerned or of any other persons. In short, proof of negligence is not necessary for availing compensation either under [Section 140](#) or **163-A** of the Act. Therefore, I see no reason to interfere with the finding of the Tribunal and the contention of the learned Standing Counsel for the appellant that when the deceased was the owner of the offending vehicle and died due to his own negligence, they are not liable to pay compensation to the petitioners is hereby rejected.

12. Insofar as the quantum of compensation is concerned, according to the petitioners, the deceased M.Naresh Kumar was aged 28 years, running a private school at Gottumukala village under the name and style of Saraswathi Navodaya School and was getting Rs.20,000/- per month. However, since the petitioners failed to produce any document to show that the deceased was earning Rs.20,000/- per month, the tribunal had taken the income of the deceased at Rs.7,000/- per month, which is highly excessive. Therefore, as the petition is filed under Section 163-A of Motor Vehicles act, the income of the deceased can be taken at Rs.40,000/- per annum. However, since the claim petition is filed under Section 163-A of Motor Vehicles Act, no

future prospects can be granted. Recently Division Bench of Sikkim High Court in case of “*The Branch Manager, Shriram General Insurance Company Limited versus Dilu Rai and Other (M.A.C.A. No.10 of 2018, dated: 4.4.2022)*”, held as follows:

“It needs no reiteration that the Supreme Court has clearly spelt out as evident from the decisions cited supra that compensation to be computed under Section 163 of the M.V. Act is on the structured formula as it is based on no fault liability. Once a person invokes the provisions of Section 163A, the question of inclusion of pecuniary compensation for non-tangibles and future prospects does not arise.

20. under Section 163A future prospects or any other additional non-pecuniary heads find no place and compensation in a Claim Petition under Section 163A of the M.V. Act is to be strictly computed on the structured formula provided in the Second Schedule to the Act.”

Thus, the annual income of Rs.40,000/-, 1/3rd is to be deducted towards personal expenses of the deceased. After deducting 1/3rd amount there from towards his personal and living expenses, the contribution of the deceased to the family would be Rs.26,667/- per annum. Ex.A9 original driving license of the deceased shows the date of birth of the deceased as 2.4.1978 i.e., above 30 years as on the date of accident. Since the age of the deceased was above 30 years at the time of the accident, the appropriate multiplier is ‘17’ as per the

second schedule. Adopting multiplier '17', the total loss of dependency would be Rs.26,667 x 17 = **Rs.4,53,339/-**. That apart, the claimants are also entitled to **Rs.2,000/-** towards funeral expenses and **Rs.2,500/-** towards loss of estate. Further petitioner No.1 is entitled for **Rs.5,000/-** towards consortium. Thus in all, the petitioners are entitled for **Rs.4,62,839/-**. However, through the evidence of RW-1 coupled with Exs.B1 to B5 shows that an amount of Rs.1,01,509/- was given to PW-1 under Ex.B5 towards personal accident claim. Therefore, the compensation amount awarded by the Tribunal is hereby reduced from Rs.9,51,491/- to **Rs.4,62,839/-**. However, after deducting Rs.1,01,509/- which was already received by PW.1, remaining compensation to be paid by the respondent-Insurance Company comes to **Rs.3,61,330/-**.

13. Accordingly, the M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby reduced from Rs.9,51,491/- to **Rs.3,61,330/-** with interest at 7% p.a. from the date of petition till the date of realization, to be payable by the appellant/respondent. The amount of compensation shall be apportioned among the appellants-claimants in the ratio as ordered by

the Tribunal. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

06.01.2023

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